

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Alexandria Division

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal Case No. 1:18-CR-457 (AJT)
	:	
BIJAN RAFIEKIAN, et al.	:	

**DEFENDANT RAFIEKIAN’S MOTION FOR LEAVE TO FILE SUR-REPLY TO
GOVERNMENT’S SUPPLEMENTAL RESPONSE TO DEFENDANT’S
MOTION TO EXCLUDE CO-CONSPIRATOR STATEMENTS**

Defendant Rafiekian, through counsel, respectfully seeks the Court’s leave to file the accompanying sur-reply (attached hereto as Exhibit A) to respond to the government’s untimely supplemental response [ECF No. 225]. The government’s supplemental response raised new legal arguments to which Mr. Rafiekian should be entitled to respond.

Courts have discretion to grant leave to file a sur-reply. *See Gibbs v. Plain Green, LLC*, No. 3:17-CV-495, 2017 WL 7693141, at *1 (E.D. Va. Oct. 31, 2017) (“A court has the discretion to grant a responding party leave to file a sur-reply when the moving party has raised new arguments or brought forth new material in its reply brief.”). Pursuant to Local Rule 47, “[n]o further briefs or written communications [other than the original brief, the opposing party’s response brief, and the moving party’s reply brief] may be filed without first obtaining leave of court. . . . All pleadings, motions, briefs, and filings of any kind must be timely filed[.]” E.D. VA. CRIM. R. 47(F) & (H).

The government filed a supplemental response to Defendant Rafiekian’s Motion *in Limine* to Exclude Out-of-Court Statements by Co-Conspirators without leave of the Court, and after the court heard oral argument on the motion. Moreover, the government’s supplemental reply raised new legal arguments that it could have raised weeks ago. If the court decides to

consider the government's untimely supplemental response, Mr. Rafiekian requests an opportunity to respond to the new cases and issues raised by the government.

Accordingly, Mr. Rafiekian requests that the Court accept his accompanying Sur-reply in Support of Motion *in Limine* to Exclude Out-of-Court Statements by Co-Conspirators.

Dated: June 26, 2019

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that, on the 26th day of June 2019, true and genuine copies of Defendant Bijan Rafiekian's Motion for Leave to File Sur-Reply to Government's Supplemental Response to Defendant's Motion to Exclude Co-Conspirator Statements was sent via electronic mail by the Court's CM/ECF system to the following:

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